

ESTTA Tracking number: **ESTTA110979**

Filing date: **11/21/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91168790
Party	Plaintiff Acorn Alegria Winery Acorn Alegria Winery ,
Correspondence Address	GREGORY N. OWEN OWEN, WICKERSHAM & ERICKSON, P.C. 455 MARKET STREET, 19TH FLOOR SAN FRANCISCO, CA 94105 UNITED STATES gowen@owe.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Gregory N. Owen
Filer's e-mail	gowen@owe.com
Signature	/Gregory N. Owen/
Date	11/21/2006
Attachments	No-Reliance 2.122-d.pdf (4 pages)(208953 bytes) No-Reliance 2.120-j.pdf (7 pages)(198934 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Acorn Alegria Winery, dba Acorn Winery,)	Opposition No. 91/168,790
)	
Opposer,)	Serial Nos.: 78/497,107, 78/497,110,
)	78/497,114
v.)	
)	
Sweely Holdings, LLC)	
)	
Applicant.)	
_____)	

OPPOSER'S NOTICE OF RELIANCE PURSUANT TO 37 CFR §2.122(d)

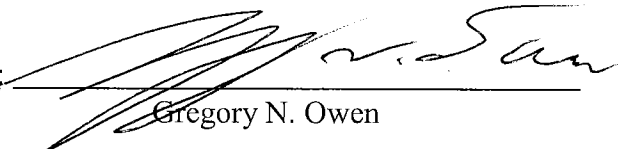
Please take notice that Opposer, Acorn Alegria Winery, dba, Acorn Winery, pursuant to 37 CFR §2.122(d)(2), is hereby noticing its reliance on U.S. Trademark Registration No. 2,061,738 for ACORN for wine owned by Opposer. A copy of the registration, prepared and issued by the Patent and Trademark Office showing both the current status and the current title to the registration, is attached hereto.

Respectfully submitted,

Date: November 21, 2006

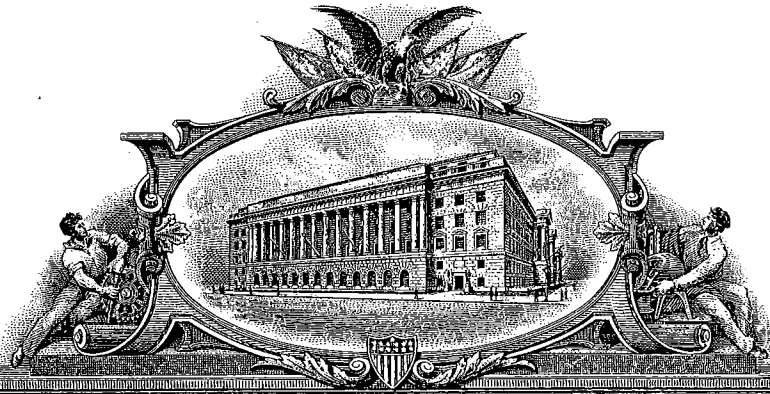
OWEN, WICKERSHAM & ERICKSON, P.C.

455 Market Street, Suite 1910
San Francisco, CA 94105
Phone: 415-882-3200
Fax: 415-882-3232
E-mail: gowen@owe.com

By: 

Gregory N. Owen
Attorneys for Opposer
Acorn Alegria Winery dba Acorn Winery

1528335



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

October 13, 2006

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,061,738 IS
CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND
EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN
THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE.

REGISTERED FOR A TERM OF 10 YEARS FROM *May 13, 1997*

SECTION 8 & 15

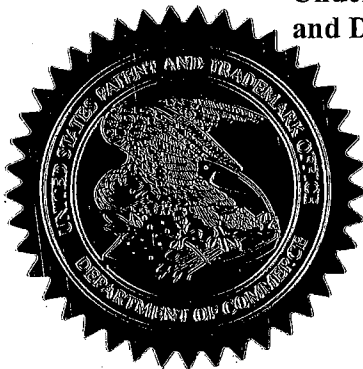
SAID RECORDS SHOW TITLE TO BE IN:

ACORN ALEGRIA WINERY

A CALIFORNIA CORPORATION

By Authority of the

Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office



H. L. Jackson
H. L. JACKSON
Certifying Officer

Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

Reg. No. 2,061,738

United States Patent and Trademark Office

Registered May 13, 1997

**TRADEMARK
PRINCIPAL REGISTER**

ACORN

WILLIAM T. NACHBAUR AND ELIZABETH H.
NACHBAUR (UNITED STATES CITIZEN)
455 MARKET STREET 19TH FLOOR
SAN FRANCISCO, CA 94105 BY ASSIGNEE OF
NACHBAUR, WILLIAM T. (UNITED STATES
CITIZEN), DBA ACORN WINERY, SAN
FRANCISCO, CA 941182009 AND NACHBAUR,
ELIZABETH H. (UNITED STATES CITIZEN),
DBA ACORN WINERY, SAN FRANCISCO,
CA 941182009

FOR: WINE, IN CLASS 33 (U.S. CLS. 47 AND
49).

FIRST USE 6-0-1996; IN COMMERCE
8-25-1996.

SN 74-481,390, FILED 1-24-1994.

ZHALEH DELANEY, EXAMINING ATTOR-
NEY

CERTIFICATION

I hereby certify that a true copy of the within OPPOSER'S NOTICE OF RELIANCE PURSUANT TO 37 CFR §2.122(d) was served via First Class Mail, postage prepaid, on the 21st day of November 2006, to the following counsel of record: Jason J. Romero, Osborn Maledon, P.A., 2929 N. Central Avenue, Suite 2100, Phoenix, AZ 85012

A handwritten signature in black ink, appearing to read "BC Dunne", written over a horizontal line.

B.C. Dunne

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Acorn Alegria Winery, dba Acorn Winery,)
)
Opposer,)
)
v.)
)
Sweely Holdings, LLC)
)
Applicant.)
_____)

Opposition No. 91/168,790

Serial Nos.: 78/497,107, 78/497,110,
78/497,114

OPPOSER'S NOTICE OF RELIANCE PURSUANT TO 37 CFR §2.120(j)

Please take notice that Opposer, Acorn Alegria Winery, dba, Acorn Winery, pursuant to 37 CFR §2.120(j), is hereby noticing its reliance on and making of record Applicant's Responses To Opposer's First Set Of Interrogatories Nos. 1, 2, 3, 4, 5, and 10. True and correct copies of the interrogatories and responses are attached hereto.

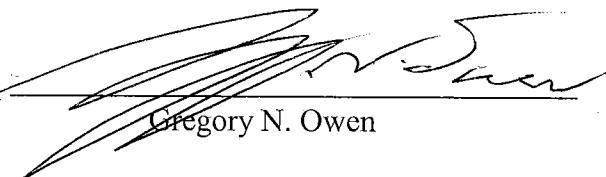
Respectfully submitted,

Date: November 21, 2006

OWEN, WICKERSHAM & ERICKSON, P.C.

455 Market Street, Suite 1910
San Francisco, CA 94105
Phone: 415-882-3200
Fax: 415-882-3232
E-mail: gowen@owe.com

By: _____


Gregory N. Owen

Attorneys for Opposer
Acorn Alegria Winery dba Acorn Winery

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Acorn Alegria Winery,
Dba Acorn Winery

Opposer,

v.

Sweely Holdings, LLC

Applicant.

Opposition No. 91/168,790
Appln. Serial No. 78/497,107,
78/497,110, 78/497,114

**APPLICANT'S RESPONSES TO
OPPOSER'S FIRST SET OF
INTERROGATORIES**

PROPOUNDING PARTY: Opposer, Acorn Alegria Winery, dba Acorn Winery

RESPONDING PARTY: Applicant, Sweely Holdings, LLC

SET NO: One

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 33 of the Federal Rules of Civil Procedures, Applicant Sweely Holdings ("Sweely") hereby submits its responses to Opposer's First Set of Interrogatories.

GENERAL OBJECTIONS

1. Applicant objects to each of the individual interrogatories to the extent they are vague, overly broad, unduly burdensome, oppressive, and unreasonable to the extent that they seek information that is not relevant and are not reasonably calculated to lead to the discovery of admissible evidence. Applicant specifically objects to each of the individual interrogatories to the extent they request information pertaining to Applicant's use of the Mark Acorn Hill Farm in relation to its sport horse and thoroughbred training



terms and conditions of the Confidentiality Agreement entered into by the parties and filed in this Opposition.

Subject to the forgoing general objections, which are incorporated in each specific response, Applicant makes the additional specific responses and objections set forth below.

GENERAL STATEMENT

Applicant's investigation of the facts relating to this matter is not yet complete, and is ongoing. Applicant's responses herein are made without waiving its right to disclose and/or offer in its briefing other information or documents that may be discovered during Applicant's continuing investigation and discovery.

Interrogatory No. 1: Identify all wholesalers, distributors, and agents involved in the sale of Applicant's Goods bearing Applicant's Mark in the United States.

Applicant states that it has not yet begun to sell or distribute wines bearing Applicant's mark.

Interrogatory No. 2: Describe in detail the geographical areas in the United States within which Applicant's Goods bearing Applicant's Mark have been sold.

Applicant states that no wines bearing Applicant's mark have been sold to date.

Interrogatory No. 3: Describe in detail the geographical areas in the United States, within which Applicant has advertised Applicant's Goods bearing Applicant's Mark.

Applicant has not yet advertised wines bearing Applicant's Mark. Therefore, Applicant has no responsive information at this time.

Interrogatory No. 4: Describe each method of advertising and type of media that Applicant has used to advertise and/or promote Applicant's Goods bearing Applicant's Mark.

Applicant has not yet advertised wines bearing Applicant's mark. Therefore, Applicant has no responsive information at this time.

Interrogatory No. 5: Describe each method of advertising and type of media that Applicant intends to use to advertise and/or promote Applicant's Goods bearing Applicant's Mark.

Applicant states that it has not yet developed a marketing plan for the advertising and promotion of Acorn Hill wines.

Interrogatory No. 6: Identify any instance where Applicant has received orders or inquiries for goods sold under a mark comprised of the word "ACORN" which were not sold by Applicant, and identify the party making the order or inquiry.

Applicant objects to this request as vague and ambiguous as to the meaning of "goods" and "mark comprised of the word ACORN." Applicant further objects to this request on the basis that it is overbroad and unduly burdensome to the extent it requires applicant to review 30 years of business records for Acorn Hill Farm, Inc. Subject to and without waiving said objections, Applicant is not aware of any such inquiries.

Interrogatory No. 7: Identify any instance where Applicant has received a communication of any type from a third party concerning Opposer, and/or Opposer's Mark, and/or Opposer's Goods, and identify the party from whom the communication came.

Applicant states that it has not received any communications concerning Opposer's Mark, as defined by Opposer.

Interrogatory No. 10: Identify, by common commercial descriptive name, each product actually and/or intended to be offered for sale, advertised, and/or promoted by or on behalf of Applicant bearing Applicant's Mark.

Applicant objects to this request as vague and ambiguous as to the meaning of "Applicant's Mark." Applicant further objects to this request on the basis that it is overbroad and unduly burdensome to the extent it requests information regarding use of Applicant's mark in the horse training and breeding industry. Subject to and without waiving said objection, Applicant states that it sells or has sold stallion services, horses, and training in connection with the mark Acorn Hill Farm. In addition Applicant intends to sell wines and related incidentals in connection with its Mark.

...

...

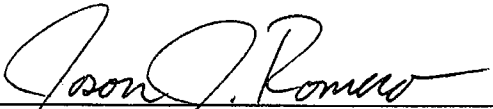
Interrogatory No. 11: For each expert Applicant has retained to give testimony in this proceedings, provide the information pursuant to Rule 26(a)(2)(B), Fed. R. Civ. P.

Applicant objects to this request to the extent it calls for attorney-client privileged information and/or information subject to protection pursuant to the attorney-work product doctrine. Subject to and without waiving said objection, Applicant states that it has not yet retained an expert in this matter.

DATED this 9th day of October, 2006.

Respectfully submitted,

SWEELY HOLDINGS, LLC

By: 


Jonathan F. Ariano
Jason J. Romero
Karim Adatia

Attorneys for Sweely Holdings, LLC

Osborn Maledon, P.A.
2929 N. Central Ave.
Suite 2100
Phoenix, Arizona 85012
(602) 640-9000
fax (602) 640-9050
e-mail: trademarks@omlaw.com

CERTIFICATION

I hereby certify that a true copy of the within OPPOSER'S NOTICE OF RELIANCE PURSUANT TO 37 CFR §2.120(j) was served via First Class Mail, postage prepaid, on the 21st day of November 2006, to the following counsel of record: Jason J. Romero, Osborn Maledon, P.A., 2929 N. Central Avenue, Suite 2100, Phoenix, AZ 85012


B.C. Dunne